

105TH CONGRESS
2D SESSION

H. R. 3890

To promote democracy and good governance in Nigeria, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1998

Mr. GILMAN (for himself and Mr. PAYNE) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote democracy and good governance in Nigeria, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nigerian Democracy
5 and Civil Society Empowerment Act”.

6 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The continued rule of the Nigerian military
2 government, in power since a 1993 coup, under-
3 mines confidence in the Nigerian economy, damages
4 relations between Nigeria and the United States,
5 threatens the political and economic stability of West
6 Africa, and harms the lives of the people of Nigeria.

7 (2) The transition plan announced by the Gov-
8 ernment of Nigeria on October 1, 1995, which in-
9 cludes a commitment to hold free and fair elections,
10 has so far failed to foster an environment in which
11 such elections would be considered free and fair, nor
12 was the transition plan itself developed in a free and
13 open manner or with the participation of the Nige-
14 rian people.

15 (3) The international community would con-
16 sider a free and fair election in Nigeria one that in-
17 volves a genuinely independent electoral commission
18 and an open and fair process for the registration of
19 political parties and the fielding of candidates and
20 an environment that allows the full unrestricted par-
21 ticipation by all sectors of the Nigerian population.

22 (4) In particular, the process of registering vot-
23 ers and political parties has been significantly flawed
24 and subject to such extreme pressure by the military

1 so as to guarantee the uncontested election of the in-
2 cumbent or his designee to the presidency.

3 (5) The tenure of the ruling military govern-
4 ment in Nigeria has been marked by egregious
5 human rights abuses, devastating economic decline,
6 and rampant corruption.

7 (6) Previous and current military regimes have
8 turned Nigeria into a haven for international drug
9 trafficking rings and other criminal organizations.

10 (7) On September 18, 1997, a social function in
11 honor of then-United States Ambassador Walter
12 Carrington was disrupted by Nigerian state security
13 forces. This culminated a campaign of political in-
14 timidation and personal harassment against Amba-
15 sador Carrington by the ruling regime.

16 (8) Since 1993, the United States and other
17 members of the international community have im-
18 posed limited sanctions against Nigeria in response
19 to human rights violations and political repression.

20 (9) According to international and Nigerian
21 human rights groups, at least several hundred de-
22 mocracy and human rights activists and journalists
23 have been arbitrarily detained or imprisoned, with-
24 out appropriate due process of law.

1 (10)(A) The widely recognized winner of the
2 annulled June 6, 1993, presidential election, Chief
3 Moshood K. O. Abiola, remains in detention on
4 charges of treason.

5 (B) General Olusegun Obassanjo (rt.), who is a
6 former head of state and the only military leader to
7 turn over power to a democratically elected civilian
8 government and who has played a prominent role on
9 the international stage as an advocate of peace and
10 reconciliation, remains in prison serving a life sen-
11 tence following a secret trial that failed to meet
12 international standards of due process over an al-
13 leged coup plot that has never been proven to exist.

14 (C) Internationally renowned writer, Ken Saro-
15 Wiwa, and 8 other Ogoni activists were arrested in
16 May 1994 and executed on November 10, 1995, de-
17 spite the pleas to spare their lives from around the
18 world.

19 (D) Frank O. Kokori, Secretary General of the
20 National Union of Petroleum and Natural Gas
21 Workers (NUPENG), who was arrested in August
22 1994, and has been held incommunicado since, Chief
23 Milton G. Dabibi, Secretary General of Staff Con-
24 sultative Association of Nigeria (SESCAN) and
25 former Secretary General of the Petroleum and Nat-

1 ural Gas Senior Staff Association (PENGASSAN),
2 who was arrested in January 1996, remains in de-
3 tention without charge, for leading demonstrations
4 against the canceled elections and against govern-
5 ment efforts to control the labor unions.

6 (E) Among those individuals who have been de-
7 tained under similar circumstances and who remain
8 in prison are Christine Anyanwu, Editor-in-Chief
9 and publisher of The Sunday Magazine (TSM),
10 Kunle Ajibade and George Mbah, editor and assist-
11 ant editor of the News, Ben Charles Obi, a journal-
12 ist who was tried, convicted, and jailed by the infam-
13 ous special military tribunal during the reason
14 trials over the alleged 1995 coup plot, the “Ogoni
15 21” who were arrested on the same charges used to
16 convict and execute the “Ogoni 9” and Dr. Beko
17 Ransome-Kuti, a respected human rights activist
18 and leader of the pro-democracy movement and
19 Shehu Sani, the Vice-Chairman of the Campaign for
20 Democracy.

21 (11) Numerous decrees issued by the military
22 government in Nigeria suspend the constitutional
23 protection of fundamental human rights, allow in-
24 definite detention without charge, revoke the juris-

1 diction of civilian courts, and criminalize peaceful
2 criticism of the transition program.

3 (12) As a signatory to the International Cov-
4 enant on Civil and Political Rights (ICCPR), the
5 Harare Commonwealth Declaration, and the African
6 Charter on Human and Peoples' Rights, Nigeria is
7 obligated to grant its citizens the right to fairly con-
8 duct elections that guarantee the free expression of
9 the will of the electors.

10 (13) Nigeria has played a major role in restor-
11 ing elected, civilian governments in Liberia and Si-
12 erra Leone as the leading military force within the
13 Economic Community of West African States
14 (ECOWAS) peacekeeping force, yet the military re-
15 gime has refused to allow the unfettered return of
16 elected, civilian government in Nigeria.

17 (14) Despite organizing and managing the June
18 12, 1993, elections, the Nigerian military regime
19 nullified that election, imprisoned the winner a year
20 later, and continues to fail to provide a coherent ex-
21 planation for their actions.

22 (15) Nigeria has used its military and economic
23 strength to threaten the land and maritime borders
24 and sovereignty of neighboring countries, which is

1 contrary to numerous international treaties to which
2 it is a signatory.

3 (b) DECLARATION OF POLICY.—Congress declares
4 that the United States should encourage political, eco-
5 nomic, and legal reforms necessary to ensure rule of law
6 and respect for human rights in Nigeria and support a
7 timely and effective transition to democratic, civilian gov-
8 ernment in Nigeria.

9 **SEC. 3. SENSE OF CONGRESS.**

10 (a) INTERNATIONAL COOPERATION.—It is the sense
11 of Congress that the President should, in any and all
12 international fora, seek the cooperation of other countries
13 as part of the United States policy of isolating the military
14 government of Nigeria.

15 (b) UNITED NATIONS HUMAN RIGHTS COMMIS-
16 SION.—It is the sense of Congress that the President
17 should instruct the United States Representative to the
18 United Nations Human Rights Commission (UNHRC) to
19 use the voice and vote of the United States at the annual
20 meeting of the Commission—

21 (1) to condemn human rights abuses in Nigeria;

22 and

23 (2) to press for the appointment of a special
24 rapporteur on Nigeria, as called for in Commission
25 Resolution 1997/53.

1 (c) SPECIAL ENVOY FOR NIGERIA.—It is the sense
2 of Congress that, because the United States Ambassador
3 to Nigeria, a resident of both Lagos and Abuja, Nigeria,
4 is the President’s representative to the Government of Ni-
5 geria, serves at the pleasure of the President, and was ap-
6 pointed by and with the advice and consent of the Senate,
7 the President should not send any other envoy to Nigeria
8 without prior notification of Congress and should not des-
9 ignate a special envoy to Nigeria without consulting Con-
10 gress.

11 **SEC. 4. ASSISTANCE TO PROMOTE DEMOCRACY AND CIVIL**
12 **SOCIETY IN NIGERIA.**

13 (a) DEVELOPMENT ASSISTANCE.—

14 (1) IN GENERAL.—Of the amounts made avail-
15 able for fiscal years 1999, 2000, and 2001 to carry
16 out chapter 1 of part I of the Foreign Assistance
17 Act of 1961 (22 U.S.C. 2151 et seq.), not less than
18 \$10,000,000 for fiscal year 1999, not less than
19 \$12,000,000 for fiscal year 2000, and not less than
20 \$15,000,000 for fiscal year 2001 should be available
21 for assistance described in paragraph (2) for Nige-
22 ria.

23 (2) ASSISTANCE DESCRIBED.—

24 (A) IN GENERAL.—The assistance de-
25 scribed in this paragraph is assistance provided

1 to nongovernmental organizations for the pur-
2 pose of promoting democracy, good governance,
3 and the rule of law in Nigeria.

4 (B) ADDITIONAL REQUIREMENT.—In pro-
5 viding assistance under this subsection, the Ad-
6 ministrator of the United States Agency for
7 International Development shall ensure that
8 nongovernmental organizations receiving such
9 assistance represent a broad cross-section of so-
10 ciety in Nigeria, including—

11 (i) organizations with representation
12 from various ethnic groups;

13 (ii) organizations containing journal-
14 ists, lawyers, accountants, doctors, teach-
15 ers, and other professionals;

16 (iii) business organizations;

17 (iv) organizations that represent con-
18 stituencies from northern Nigeria;

19 (v) religious organizations with a civic
20 focus; and

21 (vi) other organizations that seek to
22 promote democracy, human rights, and ac-
23 countable government.

24 (3) GRANTS FOR PROMOTION OF HUMAN
25 RIGHTS.—Of the amounts made available for fiscal

1 years 1999, 2000, and 2001 under paragraph (1),
2 not less than \$500,000 for each such fiscal year
3 should be available to the United States Agency for
4 International Development for the purpose of provid-
5 ing grants of not more than \$25,000 each to sup-
6 port individuals or nongovernmental organizations
7 that seek to promote, directly or indirectly, the ad-
8 vancement of human rights in Nigeria.

9 (b) USIA INFORMATION ASSISTANCE.—Of the
10 amounts made available for fiscal years 1999, 2000, and
11 2001 under subsection (a)(1), not less than \$1,000,000
12 for fiscal year 1999, \$1,500,000 for fiscal year 2000, and
13 \$2,000,000 for fiscal year 2001 should be made available
14 to the United States Information Agency for the purpose
15 of supporting its activities in Nigeria, including the pro-
16 motion of greater awareness among Nigerians of constitu-
17 tional democracy, the rule of law, and respect for human
18 rights.

19 (c) STAFF LEVELS AND ASSIGNMENTS OF UNITED
20 STATES PERSONNEL IN NIGERIA.—

21 (1) FINDING.—Congress finds that staff levels
22 at the office of the United States Agency for Inter-
23 national Development in Lagos, Nigeria, are inad-
24 equate.

1 (2) SENSE OF CONGRESS.—It is the sense of
 2 Congress that the Administrator of the United
 3 States Agency for International Development
 4 should—

5 (A) increase the number of United States
 6 personnel at such Agency’s office in Lagos, Ni-
 7 geria, from within the current, overall staff re-
 8 sources of such Agency in order for such office
 9 to be sufficiently staffed to carry out subsection
 10 (a); and

11 (B) consider placement of personnel else-
 12 where in Nigeria.

13 **SEC. 5. PROHIBITION ON ECONOMIC ASSISTANCE TO THE**
 14 **GOVERNMENT OF NIGERIA; PROHIBITION ON**
 15 **MILITARY ASSISTANCE FOR NIGERIA; RE-**
 16 **QUIREMENT TO OPPOSE MULTILATERAL AS-**
 17 **SISTANCE FOR NIGERIA.**

18 (a) PROHIBITION ON ECONOMIC ASSISTANCE.—

19 (1) IN GENERAL.—Economic assistance (includ-
 20 ing funds previously appropriated for economic as-
 21 sistance) may not be provided to the Government of
 22 Nigeria.

23 (2) ECONOMIC ASSISTANCE DEFINED.—As used
 24 in this subsection, the term “economic assistance”—

25 (A) means—

1 (i) any assistance under part I of the
2 Foreign Assistance Act of 1961 (22 U.S.C.
3 2151 et seq.) and any assistance under
4 chapter 4 of part II of such Act (22 U.S.C.
5 2346 et seq.) (relating to economic support
6 fund); and

7 (ii) any financing by the Export-Im-
8 port Bank of the United States, financing
9 and assistance by the Overseas Private In-
10 vestment Corporation, and assistance by
11 the Trade and Development Agency; and

12 (B) does not include disaster relief assist-
13 ance, refugee assistance, or narcotics control as-
14 sistance under chapter 8 of part I of the For-
15 eign Assistance Act of 1961 (22 U.S.C. 2291 et
16 seq.).

17 (b) PROHIBITION ON MILITARY ASSISTANCE OR
18 ARMS TRANSFERS.—

19 (1) IN GENERAL.—Military assistance (includ-
20 ing funds previously appropriated for military assist-
21 ance) or arms transfers may not be provided to Ni-
22 geria.

23 (2) MILITARY ASSISTANCE OR ARMS TRANS-
24 FERS.—The term “military assistance or arms
25 transfers” means—

1 (A) assistance under chapter 2 of part II
2 of the Foreign Assistance Act of 1961 (22
3 U.S.C. 2311 et seq.) (relating to military assist-
4 ance), including the transfer of excess defense
5 articles under section 516 of that Act (22
6 U.S.C. 2321j);

7 (B) assistance under chapter 5 of part II
8 of the Foreign Assistance Act of 1961 (22
9 U.S.C. 2347 et seq.) (relating to international
10 military education and training);

11 (C) assistance under the “Foreign Military
12 Financing Program” under section 23 of the
13 Arms Export Control Act (22 U.S.C. 2763); or

14 (D) the transfer of defense articles, de-
15 fense services, or design and construction serv-
16 ices under the Arms Export Control Act (22
17 U.S.C. 2751 et seq.), including defense articles
18 and defense services licensed or approved for
19 export under section 38 of that Act (22 U.S.C.
20 2778).

21 (c) REQUIREMENT TO OPPOSE MULTILATERAL AS-
22 SISTANCE.—

23 (1) IN GENERAL.—The Secretary of the Treas-
24 ury shall instruct the United States executive direc-
25 tor to each of the international financial institutions

described in paragraph (2) to use the voice and vote of the United States to oppose any assistance to the Government of Nigeria.

(2) INTERNATIONAL FINANCIAL INSTITUTIONS DESCRIBED.—The international financial institutions described in this paragraph are the African Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the International Monetary Fund.

SEC. 6. EXCLUSION FROM ADMISSION INTO THE UNITED STATES OF CERTAIN NIGERIAN NATIONALS.

Notwithstanding any other provision of law, the Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who is—

(1) a current member of the Provisional Ruling Council of Nigeria;

(2) a current civilian minister of Nigeria not on the Provisional Ruling Council;

(3) a military officer currently in the armed forces of Nigeria;

1 (4) a person in the Foreign Ministry of Nigeria
2 who holds Ambassadorial rank, whether in Nigeria
3 or abroad;

4 (5) a current civilian head of any agency of the
5 Nigerian government with a rank comparable to the
6 Senior Executive Service in the United States;

7 (6) a current civilian advisor or financial backer
8 of the head of state of Nigeria;

9 (7) a high-ranking member of the inner circle
10 of the Babangida regime of Nigeria on June 12,
11 1993;

12 (8) a high-ranking member of the inner circle
13 of the Shonekan interim national government of Ni-
14 geria;

15 (9) a civilian who there is reason to believe is
16 traveling to the United States for the purpose of
17 promoting the policies of the military government of
18 Nigeria;

19 (10) a current head of a parastatal organization
20 in Nigeria; or

21 (11) a spouse or minor child of any person de-
22 scribed in any of the paragraphs (1) through (10).

23 **SEC. 7. ADDITIONAL MEASURES.**

24 (a) IN GENERAL.—Unless the President determines
25 and certifies to the appropriate congressional committees

1 by December 31, 1998, that a free and fair presidential
2 election has occurred in Nigeria during 1998 and so cer-
3 tifies to the appropriate committees of Congress, the
4 President, effective January 1, 1999—

5 (1) shall exercise his authority under section
6 203 of the International Emergency Economic Pow-
7 ers Act (50 U.S.C. 1702) to prohibit any financial
8 transaction involving the participation by a Nigerian
9 national as a representative of the Federal Republic
10 of Nigeria in a sporting event in the United States;

11 (2) shall expand the restrictions in Presidential
12 Proclamation No. 6636 of December 10, 1993, to
13 include a prohibition on entry into the United States
14 of any employee or military officer of the Nigerian
15 government and their immediate families;

16 (3) shall submit a report to the appropriate
17 congressional committees listing, by name, senior
18 Nigerian government officials and military officers
19 who are suspended from entry into the United
20 States under section 6; and

21 (4) shall consider additional economic sanctions
22 against Nigeria.

23 (b) ACTIONS OF INTERNATIONAL SPORTS ORGANIZA-
24 TIONS.—It is the sense of Congress that any international
25 sports organization in which the United States is rep-

resented should refuse to invite the participation of any national of Nigeria in any sporting event in the United States sponsored by that organization.

SEC. 8. WAIVER OF PROHIBITIONS AGAINST NIGERIA IF CERTAIN REQUIREMENTS MET.

(a) IN GENERAL.—The President may waive any of the prohibitions contained in section 5, 6, or 7 for any fiscal year if the President makes a determination under subsection (b) for that fiscal year and transmits a notification to Congress of that determination under subsection (c).

(b) PRESIDENTIAL DETERMINATION REQUIRED.—A determination under this subsection is a determination that—

(1) the Government of Nigeria—

(A) is not harassing human rights and democracy advocates and individuals who criticize the government’s transition program;

(B) has established a new transition process developed in consultation with the pro-democracy forces, including the establishment of a genuinely independent electoral commission and the development of an open and fair process for registration of political parties, candidates, and voters;

1 (C) is providing increased protection for
2 freedom of speech, assembly, and the media, in-
3 cluding cessation of harassment of journalists;

4 (D) has released individuals who have been
5 imprisoned without due process or for political
6 reasons;

7 (E) is providing access for international
8 human rights monitors;

9 (F) has repealed all decrees and laws
10 that—

11 (i) grant undue powers to the mili-
12 tary;

13 (ii) suspend the constitutional protec-
14 tion of fundamental human rights; or

15 (iii) allow indefinite detention without
16 charge, including the State of Security
17 (Detention of Persons) Decree No. 2 of
18 1984; and

19 (G) has unconditionally withdrawn the Ni-
20 gerian internal security task force from regions
21 in which the Ogoni ethnic group lives and from
22 other oil-producing areas where violence has
23 been excessive; or

1 (2) it is in the national interests of the United
2 States to waive the prohibition in section 5, 6, or 7,
3 as the case may be.

4 (c) CONGRESSIONAL NOTIFICATION.—Notification
5 under this subsection is written notification of the deter-
6 mination of the President under subsection (b) provided
7 to the appropriate congressional committees not less than
8 15 days in advance of any waiver of any prohibition in
9 section 5, 6, or 7, subject to the procedures applicable to
10 reprogramming notifications under section 634A of the
11 Foreign Assistance Act of 1961 (22 U.S.C. 2394–1).

12 **SEC. 9. PROHIBITION ON UNITED STATES ASSISTANCE OR**
13 **CONTRIBUTIONS TO SUPPORT OR INFLU-**
14 **ENCE ELECTION ACTIVITIES IN NIGERIA.**

15 (a) PROHIBITION.—

16 (1) IN GENERAL.—No department, agency, or
17 other entity of the United States Government shall
18 provide any assistance or other contribution to any
19 political party, group, organization, or person if the
20 assistance or contribution would have the purpose or
21 effect of supporting or influencing any election or
22 campaign for election in Nigeria.

23 (2) PERSON DEFINED.—As used in paragraph
24 (1), the term “person” means any natural person,

1 any corporation, partnership, or other juridical en-
2 tity.

3 (b) WAIVER.—The President may waive the prohibi-
4 tion contained in subsection (a) if the President—

5 (1) determines that—

6 (A) the climate exists in Nigeria for a free
7 and fair democratic election that will lead to ci-
8 vilian rule; or

9 (B) it is in the national interests of the
10 United States to do so; and

11 (2) notifies the appropriate congressional com-
12 mittees not less than 15 days in advance of the de-
13 termination under paragraph (1), subject to the pro-
14 cedures applicable to reprogramming notifications
15 under section 634A of the Foreign Assistance Act of
16 1961 (22 U.S.C. 2394–1).

17 **SEC. 10. REPORT ON CORRUPTION IN NIGERIA.**

18 Not later than 3 months after the date of the enact-
19 ment of this Act, and annually for the next 5 years there-
20 after, the Secretary of State shall prepare and submit to
21 the appropriate congressional committees, and make avail-
22 able to the public, a report on governmental corruption
23 in Nigeria. This report shall include—

24 (1) evidence of corruption by government offi-
25 cials in Nigeria;

1 (2) the impact of corruption on the delivery of
2 government services in Nigeria;

3 (3) the impact of corruption on United States
4 business interests in Nigeria;

5 (4) the impact of advance fee fraud, and other
6 fraudulent business schemes originating in Nigeria,
7 on United States citizens; and

8 (5) the impact of corruption on Nigeria’s for-
9 eign policy.

10 **SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DE-**
11 **FINED.**

12 Except as provided in section 6, in this Act, the term
13 “appropriate congressional committees” means—

14 (1) the Committee on International Relations of
15 the House of Representatives; and

16 (2) the Committee on Foreign Relations of the
17 Senate.

○